

# **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**

## **INITIAL STATEMENT OF REASONS**

**DECEMBER 2006**

TITLE 13, CALIFORNIA CODE OF REGULATIONS  
DIVISION 2, CHAPTER 6.5, AMEND ARTICLE 1, SECTION 1201; ARTICLE 3,  
SECTIONS 1212, 1212.5, 1213, AND ARTICLE 6, SECTION 1234

### **MOTOR CARRIER SAFETY - HOURS OF SERVICE**

**(CHP-R-06-04)**

(OAL File Number)

### **PURPOSE OF REGULATORY ACTION**

California Vehicle Code (VC) Section 2402 authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 32002, 34501, 34501.2, and 34501.5 VC allow the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 VC, which are commercial vehicles commonly referred to as "regulated" vehicles (trucks, truck-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13, California Code of Regulations (13 CCR).

This rulemaking action adopts driver hours of service rules which are essentially identical to the newly adopted federal driver hours of service rules listed in Title 49, Code of Federal Regulations (49 CFR), Part 395. By adopting the essentially identical regulations, this rulemaking action will enhance the competitiveness of California by eliminating or modifying, to the extent possible, regulations that represent a negative impact on businesses by conflicting with updated federal regulations. Also, this rulemaking will allow the CHP to comply with the requirements of Section 34501.2 VC, by adopting regulations consistent with regulations adopted by the United States Department of Transportation. Lastly, this rulemaking action will add nonsubstantive changes to regulatory language in order to lend further clarity to existing rules.

### **SECTION BY SECTION OVERVIEW**

Title 13 CCR, Division 2, Chapter 6.5 contains the CHP Motor Carrier Safety Regulations. Article 1, Sections 1200 through 1202.2, contain the Definitions and General Provisions and Article 3, Sections 1212 through 1218 contain the General Driving Requirements.

## **Article 1. Definitions and General Provisions.**

### **Section 1201. Definitions.**

**Subsection (n)** will be amended to more clearly define an interstate driver as a driver who operates in interstate commerce. The CHP proposes to adopt, by reference, the definition “interstate commerce” as defined in 49 CFR, Section 390.5 in order to meet the mandate and intent of Section 34501.2 VC. Because Section 34501.2 VC mandates the CHP to adopt driver hours of service regulations consistent with federal rules, as they now exist and are hereafter amended, it is equally important that the applicability for those regulations be adopted in the same manner, as the current definition for interstate driver is based largely on archaic definitions and understandings relative to the applicability of the federal driver hours of service regulations.

In general, *interstate* commerce means any trade, traffic, or transportation which involves the crossing of state lines or national boundaries. A driver is considered to be engaged in interstate commerce and federal regulations apply immediately upon transporting a load consisting of any quantity of interstate freight even if the load consists primarily of intrastate freight, or when a driver’s intended route involves crossing state lines or national boundaries, whether the vehicle is loaded or empty. Additionally, drivers operating solely within the state, while engaged in the initial or continuous movement of interstate freight are also considered to be engaged in interstate commerce. For example, general freight loaded in Portland, OR, with a final destination of Los Angeles, CA, as manifested by the shipper, is transported to a terminal in Sacramento, CA. A driver from the Sacramento terminal is dispatched to transport the freight to Los Angeles. Although the second driver operated solely within the state, this driver is considered to be engaged in the continuous movement of interstate freight.

**Subsection (o)** will be amended to more clearly define an intrastate driver as a driver who operates a vehicle in other than interstate commerce, for the same reasons as indicated in subsection (n).

Consequently, *intrastate* commerce means any trade, traffic, or transportation that originates in transit within the state and which is ultimately bound for a destination within the state, without passing through another state. This would also include a motor carrier or driver who is not subject to federal regulation (not in commerce), however, is regulated by California rules.

The federal regulations are clear in determining the applicability of state or federal driver hours of service regulations is based upon the origin and ultimate destination of the property or passengers being transported. A driver who is usually subject to federal driver hours of service regulations (interstate driver) may operate under California’s intrastate driver hours of service regulations immediately upon transporting a load consisting solely of freight in intrastate commerce, not upon dispatch to transport the load. Additionally, a driver will continue to be considered an intrastate driver and be permitted to operate under state regulations, even after off-loading the vehicle, until engaged in interstate commerce.

## **Article 3. General Driving Requirements.**

## **Section 1212. Driver Hours of Service.**

**Subsection (a)** will be amended to more clearly indicate the applicability of the driver hours of service rules to include only intrastate motor carriers and drivers, except for those instances where interstate motor carriers and drivers are clearly indicated.

**Subsection (b)** is the adverse driving condition exception. It is being revised to include new daily on-duty and off-duty driver hours of service limits consistent with the newly adopted federal limits.

The adverse driving condition exception applies only to the driving time limitation of 11 hours for property-carrying vehicles or 10 hours for passenger-carrying vehicles. The adverse driving condition exception cannot be used if the driver has accumulated driving time and on-duty (not driving) time, which would put the driver over their daily duty-hour limit or over the 80 hours in 8-consecutive day limit. In addition, the adverse driving condition exception cannot be used for loading and unloading delays. An absolute prerequisite for claiming the adverse driving condition exception is that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or *should have known* of adverse driving conditions are not eligible for the two hours additional driving time.

**Subsection (e)** Paragraphs (e)(4), (e)(5), (e)(6), and (e)(7) and are being revised to update the current 100-air mile radius exception in order to reflect recent revisions to the federal rules. When all five of the conditions in paragraph (e) are met, a carrier may maintain time records for the driver.

**Subsection (f)** is being revised to reflect similar changes to Section 1212.5(a) and (b). Subsections (a) and (b) of Section 1212.5 are being revised in order to address intrastate and interstate drivers separately. For this reason the reference to subsection (b) will be removed in order to reference the hours of service limits as they pertain to intrastate drivers only.

**Subsection (g)** is being revised to update the off-duty, on-duty, and driving limits of the sleeper berth exception. The CHP proposes to improve the regulatory text for the sleeper berth provision by adopting language which is consistent with the sleeper-berth exception adopted in 49 CFR, Part 395. This change will ensure a clear understanding of the rule, however, will significantly affect the way the CHP now enforces the sleeper berth exception.

These requirements will ensure that drivers using the sleeper berth to obtain the minimum off-duty time have at least one primary sleep period of a sufficient length to provide restorative benefits. The second period will allow a driver to have time for a nap or rest break or provide an opportunity to attend to personal matters. The opportunity to take a nap later in the day is an important benefit, especially since drivers taking advantage of the sleeper berth provision may be

operating on an irregular/rotating schedule, getting out of phase with their natural circadian rhythm.

The calculation of the driver's 12-hour driving limit and consecutive 16-hour on-duty limit will restart once a driver has at least 10 hours of off-duty time, whether it is (1) 10 consecutive hours of sleeper berth time; (2) 10 consecutive hours of off-duty time; or (3) a combination of 10 consecutive hours of sleeper berth and off-duty time. Adoption of this proposal will provide drivers with a fourth option to obtain the equivalent of 10 hours off-duty by combining two separate periods of sleeper berth or off-duty time that total at least 10 hours.

When calculating off-duty time for drivers using sleeper berths under this proposal, only two separate periods may be used and both must add up to at least 10 hours. One period must be at least 8 consecutive hours of sleeper berth time. The second period must be at least 2, but less than 10, consecutive hours of sleeper berth time, off-duty time, or a combination of both.

For drivers using two separate periods of sleeper berth and off-duty time, the calculation of the driver's 12-hour driving limit and consecutive 16-hour on-duty limit will begin from the end of the first period used in the calculation. This will provide a simplified method for calculating a driver's on-duty and driving time and address enforcement concerns which might otherwise be anticipated with the new consecutive 16-hour on-duty limit.

For example, following 10 consecutive hours off-duty, a driver begins driving at 5 a.m. At 10 a.m., the driver takes 2 consecutive hours off-duty (1 hour of off-duty time followed by 1 hour of sleeper berth time). At noon, the driver drives for another 5 hours. At 5 p.m., the driver goes into the sleeper berth for 8 consecutive hours. At 1 a.m. the driver begins driving again. In this example, the calculation of the driver's on-duty and driving time begins at the end of the first off-duty/sleeper-berth period, or noon. Therefore, this driver has 7 hours of driving time available at 1 a.m. At no time will a driver have a combination of more than 12 hours of driving time on either side of a sleeper-berth period or off-duty period that is less than ten hours in length.

**Subsection (h)** is being revised to reflect similar changes being made to Section 1212.5(a).

## **Section 1212.5. Maximum Driving and On-Duty Time.**

**Subsection (a)** is being revised to reflect changes made to the federal driver hours of service regulations. This rulemaking action is necessary because Section 34501.2 VC requires the CHP to maintain driver hours of service rules which are consistent with the federal driver hours of service rules listed in 49 CFR, Part 395, including the Tolerance Guidelines permitted by Part 355.

Specifically, a truck driver that does not use a sleeper berth must not drive more than 12-cumulative hours following 10 consecutive hours off duty. Such a driver also must not drive after the end of the 16<sup>th</sup> hour after coming on duty following 10-consecutive hours off duty. This means that once the driver begins a tour of duty, the driver's driving duties must end within 16-consecutive hours. The current 15-hour rule allows drivers to extend the work day by taking off-

duty time, including meal stops and other rest breaks, of less than 8 hours duration other than sleeper berth time. This rule requires that taking off-duty time, including meal stops and other rest breaks, of less than 10-hours duration, other than sleeper berth time, will not extend the work day.

Also, in order to draw a clear distinction between the rules for interstate and intrastate drivers, the CHP is proposing to address the rules separately. Therefore, subsection (a) will only refer to intrastate drivers and motor carriers and subsection (b) will only refer to interstate drivers and motor carriers.

**Subsection (b)** is being revised to adopt, by reference, 49 CFR, Part 395, for interstate motor carriers and drivers. This will provide interstate drivers and motor carriers with seamless uniformity between state and federal transportation regulations, thereby, permitting interstate motor carriers to operate under one set of rules.

### **Section 1213. Driver's Record of Duty Status.**

**Subsection (a)** will be amended to include language currently included in subsection (j). This amendment will simply move language already contained elsewhere in the regulations to a more appropriate location in subsection (a). In short, an interstate driver completing a record of duty status, in compliance with 49 CFR, Sections 395.8 or 395.15, is also considered to be in compliance with state regulations.

**Subsection (f)** currently indicates that failure to maintain a driver's record of duty status or to falsify entries in that same record leaves a driver and/or motor carrier liable to prosecution. The CHP proposes to amend this subsection to prohibit a driver from falsifying a driver's record of duty status and prohibit a motor carrier from allowing a driver to do so. While the subsection currently states that it is punishable to falsify a driver's record of duty status, it is imperative to both law enforcement and industry to have this subsection clearly state that it is unlawful to falsify a driver's record of duty status.

**Subsection (j)** as already stated, the CHP proposes to move language currently included in subsection (j) to subsection (a) with no substantive effect.

### **Article 6. Carrier Requirements.**

#### **Section 1234. Required Records for Motor Carriers.**

**Subsection (a)** will be amended to reflect the correct subsection reference for the definition of "supporting documents" listed in Section 1201. Subsection "w" will be deleted and "y" added.

Additionally, Section 545 VC (school bus definition) will be added to the references at the end of the section. This reference was inadvertently omitted from previous amendments.

### **STUDIES/RELATED FACTS**

None.

### **LOCAL MANDATE**

These regulations do not impose any new mandate on local agencies or school districts.

### **IMPACT ON BUSINESSES**

The CHP has not identified any significant adverse impact on businesses since these changes either maintain reasonable exceptions for carriers not directly subject to federal jurisdiction (to minimize the impact on business) or they simply adopt federal regulations, as they now exist and are hereafter amended, that already apply to the majority of the regulated community, thereby eliminating a conflict between state and federal regulations.

### **ALTERNATIVES**

The CHP has not identified any alternative, including the no action alternative that would be more effective and less burdensome for the purpose for which this action is proposed. Additionally, the CHP has not identified any alternative which would be as effective and less burdensome to affected persons other than the action being proposed.

#### *Alternatives Identified and Reviewed*

1. Amend the existing regulations for consistency with the federal regulations.
2. Make no changes to the existing regulations. This could result in federal preemption of California's Driver Hours of Service Regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with the Federal Motor Carrier Safety Regulations would also jeopardize federal Motor Carrier Safety Assistance Program grants used for commercial vehicle enforcement and training. The loss of all or a portion of this funding would in itself represent a negative impact on public safety.

## **ECONOMIC IMPACT**

The CHP has determined these regulatory amendments will result in:

- No increased costs for motor carriers directly subject to federal jurisdiction as previously discussed. This rulemaking action will simply allow the state to enforce federal regulations that already apply, but are enforced currently only by federal inspectors who in some cases apply more severe federal penalties.
- No significant compliance cost for persons or businesses directly affected.
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public.
- No impact on the level of employment in the state.
- No adverse impact on the competitiveness of this state to retain businesses, as the majority of other states (especially neighboring) have already adopted these or similar requirements.